



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R4-OAR-2022-0226; FRL-10161-02-R4]

Air Plan Approval; South Carolina; Revisions to Startup, Shutdown, and Malfunction Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on November 4, 2016. This revision was submitted by South Carolina in response to a finding of substantial inadequacy and SIP call published by EPA on June 12, 2015, of provisions in the South Carolina SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision and finds that the revision corrects the deficiencies identified in the June 12, 2015, SIP call. EPA is also approving portions of multiple SIP revisions previously submitted by SC DHEC on October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, as they relate to the provisions identified in the June 12, 2015, SIP call.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for these actions under Docket Identification No. EPA-R4-OAR-2022-0226. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Estelle Bae, Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bae can be reached by telephone at (404) 562-9143 or via electronic mail at bae.estelle@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 23, 2022, EPA proposed to approve portions of multiple SIP revisions submitted by SC DHEC on October 1, 2007, July 18, 2011, August 8, 2014, August 12, 2015, and November 17, 2016. *See* 87 FR 51631. In that notice of proposed rulemaking (NPRM), EPA also proposed to determine that the SIP revision corrects the deficiencies with respect to the South Carolina SIP that the Agency identified in the June 12, 2015, action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction” (“2015 SSM SIP Action”). *See* 80 FR 33839 (June 12, 2015). The reasons for the proposed approval and determination are stated in the August 23, 2022, NPRM (*see* 87 FR 51631) and will not be restated here. The public comment period for EPA’s proposed approval and determination ended on September 22, 2022. EPA received one set of comments in a joint letter submitted by the Sierra Club and the Environmental Integrity Project (hereinafter

collectively referred to as the commenter) on September 20, 2022. These comments are available in the docket for these actions.

II. Response to Comments

The commenter provided comments both in support of and adverse to EPA's proposed actions. EPA will not address the comments that express support for the proposed actions. Instead, this section of the final rulemaking notice will focus on the portion of the September 20, 2022, letter that did not support the proposed actions.

Comment: The commenter states that EPA should disapprove or conditionally approve the revision to South Carolina's visible emissions rule at Regulation 61-62.5, Standard No. 1, Section I.C¹ that adds an exemption for "natural gas and propane fired units" from the requirement that the owner or operator maintain a startup and shutdown log. The commenter alleges that burning these two fuels has the potential to emit elevated levels of particulate matter (PM), sulfur oxides (SO_x), nitrogen oxides (NO_x), and other pollutants that may contribute to opacity during SSM events and that adequate recordkeeping requirements during startup and shutdown periods are essential for determining compliance with the Clean Air Act (CAA or Act). According to the commenter, excluding these fuel-burning sources from the recordkeeping requirement undermines the applicable emission limits in the South Carolina SIP and "frustrates" federal CAA enforcement.

Response: EPA disagrees that the Agency should disapprove or conditionally approve the addition of an exemption from the requirement to keep logs of startups and shutdowns for fuel burning units that fire only natural gas and propane in Regulation 61-62.5, Standard No. 1, Section I.C. The existing SIP-approved text of Section I.C states:

The opacity standards set forth above do not apply during startup or shutdown.

Owners and operators shall, to the extent practicable, maintain and operate any

¹ Section I.C. regulates visible emissions from fuel burning operations, setting opacity limits from twenty to sixty percent, depending on the age of the source and whether emissions are caused by soot blowing.

source including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. In addition, the owner or operator shall maintain a log of the time, magnitude, duration and any other pertinent information to determine periods of startup and shutdown and make available to the Department upon request.

In the NPRM, EPA proposed to approve two revisions to this text. The first revision, state-effective in 2016, directly addresses the 2015 SSM SIP Action by removing the first sentence of the paragraph, which provides an exemption from opacity standards during startup or shutdown. This change satisfies EPA's June 12, 2015, SIP call for South Carolina regarding Section I.

The second revision, state-effective in 2011 and 2015,² inserts the phrase "of fuel burning sources except natural gas and propane fired units" following the word "operator" into the third sentence of the text. The effect of this change was to specify that the requirement to maintain a startup and shutdown log applies to fuel burning sources but does not apply to units that fire natural gas or propane.³

The purpose of the startup and shutdown recordkeeping requirement in Section I.C was to identify those periods when fuel burning sources were exempt from opacity standards by requiring sources to log when startup and shutdown events took place. However, because EPA is removing that exemption from the SIP through this final rulemaking, the opacity limits of Regulation 61-62.5, Standard No. 1 now apply at all times. Consequently, the rule does not differentiate periods of startup and shutdown from other modes of operation as related to compliance with the opacity limits, and therefore a requirement to keep startup and shutdown logs is no longer needed for determining compliance for any sources, including those that burn

² The July 18, 2011, submittal revised subparagraph C of Section I, "Visible Emissions," by excluding natural gas fired units from the requirement to maintain a log to determine periods of startup and shutdown. The August 12, 2015, submittal further revised the subparagraph adding propane fired units to the log keeping exception.

³ As noted in the NPRM, EPA included this revision in an August 16, 2017, direct final rulemaking notice. However, due to the receipt of an adverse comment, EPA withdrew the direct final rule, and thus, the revision remained pending. *See* 82 FR 47640 (October 13, 2017).

fuels other than natural gas or propane. Nevertheless, the State has not removed the requirement for operations that burn fuels other than natural gas or propane to maintain startup and shutdown logs.

Additionally, the revision to Regulation 61-62.5, Standard No. 1, Section I.C. being approved does not affect any excess emission recordkeeping or reporting requirements under the SIP. For example, facilities are generally required to obtain operating permits pursuant to South Carolina's Regulation 61-62.1, "Definitions and General Requirements," at Section II, "Permit Requirements." Section II.C.3 of this regulation requires sources that are not required to have continuous emission monitoring systems (CEMS) to report to the State, emissions due to equipment failures that are greater than those described for normal operation in the permit application and that last for one hour or more. The initial report must be made within 24 hours of the beginning of the occurrence of such emissions and a follow up written report must be made within 30 days. The written report covers, among other things, the magnitude of the excess emissions, the time and duration of the excess emissions, and the nature and cause of the excess emissions. For sources that are required to operate CEMS, Section II.C.4 requires regular "reports as specified in applicable parts of" the State's regulations. Also, Regulation 61-62.5, Standard No. 1, Section IV, "Opacity Monitoring Requirements," requires semiannual compliance reporting for sources required to install and operate continuous opacity monitoring systems (COMS).⁴ This report would require the disclosure of all instances in which the opacity provisions of Section I of Standard No. 1 have been exceeded and include an account of the nature and cause of the excess visible emissions.

The Agency acknowledges the commenter's concern that burning natural gas and propane emits pollutants that have the potential to contribute to visible emissions. However, visible emissions concerns from the burning of natural gas and propane are minor relative to

⁴ Sources that fire only gaseous fuel would be exempt from the COMS requirements and instead would be subject to the excess emissions reporting established via permitting at Regulation 61-62.1, Section II.C.

other available fuels. Firing these two fuels is typically associated with few monitoring requirements, if any. *See, e.g.*, 40 CFR part 63, subpart DDDDD, 40 CFR part 60, subpart Da, and 40 CFR part 75. Notwithstanding this fact, excess emissions are required to be reported in the manner just described. For the reasons stated above and in the NPRM, EPA is finalizing its approval of this change to 61-62.5, Standard No. 1, Section I.C.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference into the South Carolina SIP of Regulation 61-62.1, Section II.L, “Emergency Provisions,” which regulates permit requirements to document emergencies, State effective on September 23, 2016;⁵ Regulation 61-62.5, Standard No. 1, Section I, “Visible Emissions,” which regulates visible emissions from fuel burning operations, State effective on September 23, 2016; and Regulation 61–62.5, Standard No. 4, Section XI, “Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills,” which regulates emissions of total reduced sulfur at Kraft pulp mills, State effective on September 23, 2016. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

III. Final Actions

⁵ The remaining portions of Regulation 61-62.1, Section II, retain the June 24, 2005, State effective date, as currently approved in the South Carolina SIP under 40 CFR 52.2120(c). Additionally, although Section II.G of Regulation 61-62.1 retains the June 24, 2005, State effective date, paragraph G.6 specifically is being removed from the South Carolina SIP because it is being recodified as Section II.L of Regulation 61-62.1. These changes are explained in more detail in Section II.A of the August 23, 2022, NPRM.

⁶ *See* 62 FR 27968 (May 22, 1997).

EPA is approving South Carolina's November 4, 2016, SIP submission with respect to Regulation 61-62.1, Section II.L; Regulation 61-62.5, Standard No. 1, Section I.C; and Regulation 61-62.5, Standard No. 4, Section XI.D.4. EPA is also approving portions of the October 1, 2007, July 18, 2011, August 8, 2014, and August 12, 2015, South Carolina SIP submissions that seek revisions to these provisions, as specified in Section II of the July 26, 2022, NPRM. EPA has also determined that these SIP revisions correct the deficiencies identified in the 2015 SSM SIP Action and fully satisfy South Carolina's obligations with respect to the SIP call included in the 2015 SSM SIP Action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, these actions merely approve removal of State law not meeting Federal requirements and do not impose additional requirements beyond those already imposed by State law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because these final actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law, these final actions for the State of South Carolina do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, these actions will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. These actions are not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action(s). These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP – South Carolina

2. In § 52.2120(c), amend the table by:

- a. Under the undesignated heading “Regulation No. 62.1,” revise the entry for “Section II”; and
- b. Under the undesignated heading “Regulation No. 62.5”:
 - i. Under “Standard No. 1,” revise the entry for “Section I”; and
 - ii. Under “Standard No. 4,” revise the entry for “Section XI”.

The revisions read as follows:

§ 52.2120 Identification of plan.

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(c) * * *

EPA-Approved South Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Regulation No. 62.1	Definitions and General Requirements			
**	**	*	*	*
Section II	Permit Requirements	6/24/2005	6/2/2008, 73 FR 31369	Except for Section II.L, approved on [Insert date of publication in Federal Register] with a state effective date of September 23, 2016.
**	**	*	*	*
Regulation No. 62.5	Air Pollution Control Standards			

<i>Standard No. 1</i>	Emission from Fuel Burning Operations			
Section I	Visible Emissions	9/23/2016	[Insert date of publication in Federal Register], [Insert citation of publication]	
**	**	*	*	*
<i>Standard No. 4</i>	Emissions from Process Industries			
**	**	*	*	*
Section XI	Total Reduced Sulfur Emissions of Kraft Pulp Mills	9/23/2016	[Insert date of publication in Federal Register], [Insert citation of publication]	
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[FR Doc. 2022-21972 Filed: 10/12/2022 8:45 am; Publication Date: 10/13/2022]